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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID H. BUNDY,

Defendant.

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO RE-OPEN
DETENTION HEARING**

The United States, by and through the undersigned, respectfully submits its Response in Opposition to defendant David H. Bundy's Motion to Re-Open Detention Hearing. Doc. #297. As established herein, David Bundy submits nothing new or material that would permit this Court to reopen the issue of detention. Accordingly, the Court should deny the Motion to Re-Open and vacate the hearing.

I. RELEVANT PROCEDURAL HISTORY

On March 2, 2016, a federal grand jury seated in the District of Nevada returned a Superseding Criminal Indictment, charging defendant David H. Bundy ("D. Bundy") and 18 other defendants, including his father Cliven Bundy, and his

1 brothers, Ryan, Ammon and Mel Bundy, with, among other things, conspiring to
2 assault federal officers, obstruct justice, extort federal officers, and use and
3 brandish a firearm in relation to a crime of violence, and the substantive offenses
4 that comprise the objects of the conspiracy, all in violation of Title 18, United
5 States Code, Sections 371; 372 111(a)(1) and (b); 1503; 1951; and 924(c).

6 On March 3, 2016, D. Bundy was arrested in the District of Utah pursuant
7 to an arrest warrant issued from the Superseding Indictment. On March 4, 2016,
8 D. Bundy appeared before United States Chief Magistrate Judge Brooke C. Wells
9 in the District of Utah for his initial appearance and Rule 5 proceedings. District
10 of Utah Case 2:16-mj-130-PMW ("Utah MJ Case"), Doc. #2. At this hearing, D.
11 Bundy waived his Rule 5 hearing, was appointed an attorney from the Federal
12 Public Defender's office and the Government moved for detention. *Id.* A detention
13 hearing was scheduled for March 9, 2016. *Id.* On March 8, 2016, the Government
14 filed a memorandum proffering evidence in support of pre-trial detention. Utah MJ
15 Case, Doc #10; *see* Attachment A (Government's Memorandum in Support of
16 Detention).

17
18 On March 9, 2016, Chief Magistrate Judge Wells held the detention hearing
19 and indicated at the outset that in addition to the government's filed memorandum
20 in support of detention, she had also reviewed a binder containing defendant's
21 proposed exhibits, including a number of community support letters submitted on
22 behalf of D. Bundy. *See* Def.'s Exhibit A (Transcript of March 9, 2016, Detention
23 Hearing), p. 3:12-20.

24 /////

1 The Government's argument and proffer was based on the facts and
2 circumstances of the instant case as set forth in the Superseding Indictment and
3 the facts and arguments set forth in its detention memorandum. D. Bundy's
4 counsel argued for release on conditions. At the conclusion of the detention
5 hearing, Chief Magistrate Judge Wells ordered D. Bundy detained pending trial
6 and made oral findings on the record. *See* Def's Exh. A at pp. 40-42.

7 On March 21, 2016, D. Bundy filed a Notice of Appeal of Magistrate's
8 Detention Order in the District of Utah. *See* Utah MJ Case, Doc. #13. The
9 Government filed a response in opposition to the Notice of Appeal, arguing that
10 based on the law, the District Court in Utah lacked jurisdiction over such an
11 appeal. *Id.* at Doc. #16. The United States District Court for the District of Utah
12 Judge Robert Shelby noted on the docket for the appeal in that district that
13 Defendant filed the notice to preserve his right to appeal and that Defendant
14 recognized that any appeal would be heard by the assigned district court judge in
15 Nevada. *See* 2:16-cr-144-RJS, Doc. #3. To date, Defendant has not filed an appeal
16 of the detention order in this district.

17 On March 21, 2016, D. Bundy made his initial appearance in this district
18 and the Court recognized that the Defendant had been previously ordered detained
19 by Chief Magistrate Judge Brooks. Doc. # 167. On April 21, 2016, D. Bundy filed
20 his motion to reopen the detention hearing, attaching the transcript of the District
21 of Utah hearing as well as the letters by community members in support of D.
22 Bundy addressed to Chief Judge Brooks and which appear to be the letters
23 submitted at the original detention hearing. Doc. # 297, Exhibits A-F.
24

II. ARGUMENT

D. Bundy's detention hearing should not be reopened. A detention hearing may be reopened at any time before trial if information, not known to the movant at the time of the first hearing, is discovered, and the new information has a material bearing on the issue of detention. *See* 18 U.S.C. § 3142(f)(2). Courts strictly interpret this provision. *United States v. Turino*, No. 2:09-cr-132-JAD-GWF, 2014 WL 5261292, at *1 (D. NV Oct. 15, 2014) ("if evidence was available at the original hearing, no rehearing is granted").

D. Bundy provides nothing *new and material* within the meaning of 18 U.S.C. § 3142(f) to support reopening. Obviously, he knew that he had supporters in his community at the time of his hearing. The letters all show that his supporters have known Bundy well before the events that gave rise to his detention hearing.

Not only was this information known and available to Bundy at the time, but he argued it at his detention hearing and the Court specifically considered it. For example, when questioned about statements made by D. Bundy on Facebook evincing a disregard for federal law and authority, Bundy's attorney argued: "there are so many letters and other things speaking to his character that are very contrary to this that speak to his character as a husband, father, family man, hard worker, all of those things." Chief Judge Wells responded:

I don't disagree with that. **I read all those letters, they're kind letters based upon individual's specific knowledge of Mr. Bundy outside these circumstances.**

1 What I'm concerned with and have to apply to the factors is the
2 behavior that is alleged to have been evinced and the comments which
3 appear throughout in which disregard for federal officers of any type,
 including, I suppose, this court's order, exist. How do I concern myself
 with the safety of the officers who would supervise him?

4 Def.'s Exh. A at 38:1-16 (emphasis added).

5 The record is very clear that there is nothing new here – Judge Wells
6 already considered this information. Although the record is not clear precisely
7 what letter were considered, the letters he proffers as Exhibits B through F are
8 specifically addressed to Judge Wells, showing, at a minimum, that the
9 information in these letters was available to Bundy at the time, if not the very
10 same information considered by the Court.

11 Judge Wells evaluated this information in light of all the other § 3142
12 factors and found that the nature and circumstances of the charged offenses, the
13 weight of the evidence, and the nature of the danger posed by D. Bundy's release
14 outweighed the ties he had to his community.

15 Given this record, it is clear that D. Bundy's community support letters do
16 not present new and material information under U.S.C. § 3142(f)(2) and, thus, D.
17 Bundy offers nothing that would merit this Court reopening the detention hearing.
18 The Court should, therefore, deny his motion. *See United States v. Masters*, No.
19 2:12-cr-00145-MMD, 2012 WL 4612665, at *2, n.1 (D. NV Oct. 1, 2012) (finding
20 that magistrate judge properly concluded the defendant had failed to present
21 material evidence not known at the time of the detention that would warrant
22 reopening the hearing and noting that the defendant conceded in his reply brief
23 that the magistrate judge's decision was correct because no new evidence was
24

presented); *United States v. Dillon*, 938 F.2d 1412, 1145 (1st Cir. 1991) (affirming district court's denial of motion to reopen detention hearing where the proffered new evidence consisted of 18 character affidavits from family, friends, and employers; "this was available to the appellant at the time of the [original hearing]"); *United States v. Hare*, 873 F.2d 796, 799 (5th Cir 1989) (affirming refusal to reopen detention hearing because "testimony of [defendant's] family and friends in not new evidence").

WHEREFORE, for all the foregoing reasons, the government respectfully requests that the Court deny the Motion to Reopen Detention Hearing and vacate the hearing set in the Court's April 22, 2016, Minute Order. Doc. #313.

DATED this 2nd day of May, 2016.

Respectfully,

DANIEL G. BOGDEN
United States Attorney

//s//

STEVEN W. MYHRE
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NADIA J. AHMED
ERIN M. CREEGAN
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Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **Government's Response in Opposition to Defendant's Motion to Reopen Detention Hearing** was served upon counsel of record, via Electronic Case Filing (ECF).

Dated this 2nd day of May, 2016.

/s/ Mamie A. Ott
MAMIE A. OTT
Legal Assistant

Attachment A

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID HAROLD BUNDY,

Defendant.

Case No. 2:16MJ130

**GOVERNMENT'S MEMORANDUM
 IN SUPPORT OF MOTION FOR
 PRETRIAL DETENTION**

Magistrate Judge Brooke C. Wells

The United States, by and through undersigned counsel, respectfully submits this Memorandum in Support of its Motion for Pretrial Detention pursuant to The Bail Reform Act, Title 18, United States Code, Section 3142. As explained herein, the government seeks pretrial detention of defendant David Harold Bundy ("D. Bundy") both as a risk of non-appearance and as a danger to the safety of others and the community.

INTRODUCTION

D. Bundy is part of a criminal enterprise that engaged in an unprecedented and extremely violent and massive armed assault on federal officers on April 12, 2014, while those officers were performing their duties as part of a court-ordered cattle impoundment

operation. But for the courage of the victim officers to back away from their assaulters and abandon the cattle, the actions of D. Bundy and his co-conspirators would have resulted in catastrophic death or injury to the officers and others. The fact that no one was shot, however, does not mitigate either the level of violence used that day or the intent behind it.

D. Bundy is a beneficiary of the extortion – he is a member of the family that owns the ranch that run the cattle. He still retains the proceeds of his crime to this day.

D. Bundy has demonstrated that he is fully committed to thwarting the application of federal law to himself and his family. In April, 2014, D. Bundy quit his job in Utah and traveled to Bunkerville, Nevada to prevent the BLM from impounding cattle on public lands. To achieve these goals, D. Bundy recruited armed gunmen and then led them in the assault and extortion of federal officers. In doing so, D. Bundy nearly caused catastrophic loss of life or injury to others. After the April 12, 2014 stand-off, D. Bundy continued to violate federal law so that his father and family as a whole could enjoy the proceeds of their extortion without restraint or consequence.

D. Bundy was willing to risk his life and the lives of many others on April 12, knowing that if a single shot was fired it would have unleashed a wave of violence that could have injured or killed several people, both armed and unarmed. D. Bundy is currently charged with crimes of violence including using and carrying firearms in relation to a crime of violence under Title 18, United States Code, Section 924(c). As such, the Bail Reform Act presumes that there are no conditions or combination of conditions that will ensure the safety of the community. Here, no evidence has been

adduced during the investigation of the instant charges that rebuts that presumption. In fact, the nature and circumstances of the offenses suggest that D. Bundy will continue to act lawlessly, will not abide by court orders, and will use violence to ensure that federal laws are not enforced as to him.

FACTUAL BACKGROUND

On March 2, 2016, a federal grand jury seated in the District of Nevada returned a Superseding Indictment, charging D. Bundy and 18 other defendants with, among other things, conspiring to assault federal officers, obstruct justice, extort federal officers and use and carry a firearm in relation to a crime of violence, and the substantive offenses that comprise the objects of the conspiracy, all in violation of Title 18, United States Code, Sections 371; 111(a)(1) and (b); 1503; 1951; and 924(c).

D. Bundy was arrested on the instant charges on March 3, 2016 pursuant to an arrest warrant issued from the Superseding Indictment.

D. Bundy's background, stance toward federal authority and jurisdiction and his actions in this case establish that he presents a danger to others and to the community and a risk of non-appearance and he cannot overcome the presumption that he shall be detained. Based on the evidence adduced from its investigation to date, the government proffers the following in support of its motion for pretrial detention:

A. Factual Background

D. Bundy, age 39, is the fourth oldest son of co-defendant Cliven Bundy ("Bundy"). D. Bundy is married, has five children, and owns a construction business that is based in Mesquite, Nevada. Prior to his arrest, D. Bundy was residing in Delta, Utah,

with his in-laws while his own home is being built nearby. D. Bundy also possesses an FAA commercial pilot's license and flight instructor certificate for single engine planes.

His father, and co-defendant, Cliven Bundy ("Bundy") 69, is a long-time resident of Bunkerville, Nevada, living on 160 acres of land in a very rural and sparsely-populated area of the state. Bundy Ranch, as he refers to the property, is located near the Virgin River a few miles from where Interstate 15 crosses from Nevada into Arizona, approximately 90 miles northeast of Las Vegas, Nevada. Bundy Ranch is surrounded by hundreds of thousands of acres of federal public lands commonly referred to as the Gold Butte area or the Bunkerville Allotment. Bundy uses that entire range of land to graze his cattle unlawfully. D. Bundy grew up Bundy Ranch and remains closely affiliated with it to this day.

Bundy's ranching operation has been unconventional. Rather than manage and control his cattle, he lets them run wild on the public lands with little, if any, human interaction until such time when he traps them and hauls them off to be sold or slaughtered for his own consumption. He does not vaccinate or treat his cattle for disease; does not employ cowboys to control and herd them; does not manage or control breeding; has no knowledge of where all the cattle are located at any given time; rarely brands them before he captures them; and has to bait them into traps in order to gather them.

Nor does he bring his cattle off the public lands in the off-season to feed them when the already sparse food supply in the desert is even scarcer. Raised in the wild, Bundy's cattle are left to fend for themselves year-round, fighting off predators and

scrounging for the meager amounts of food and water available in the difficult and arid terrain that comprises the public lands in that area of the country. At the time of the events giving rise to the charges, Bundy's cattle numbered over 1,000 head, straying as far as 50 miles from his ranch and into the Lake Mead National Recreation Area ("LMNRA"), getting stuck in mud, wandering onto golf courses, straying onto the freeway – foraging aimlessly and wildly, roaming in small groups over hundreds of thousands of acres of federal lands that exist for the use of the general public for many other types of commercial and recreational uses such as camping, hunting, and hiking.

Bundy claims he has strong anti-federal government views, proclaiming that the federal government cannot own land under the U.S. Constitution. These are not principled views – and certainly they have no merit legally – but nonetheless serve conveniently as a way for Bundy to somehow try to convince others that he has some reason for acting lawlessly, other than the obvious one: it serves his own ends and benefits him financially. Untethering himself from the law, Bundy claims he can do with his cattle as he pleases, including not incurring the expenses to manage or control them and not paying for the forage they consume at the expense of federal taxpayers.

Federal law requires any rancher to pay fees and obtain grazing permits to run cattle on public lands. The evidence suggests that before 1993, Bundy paid fees and kept current the permit his father before him had acquired for grazing cattle on the Bunkerville Allotment. In 1993, however, when BLM restricted both the number of head he could graze and the seasons during which he could graze them, Bundy was faced with the prospect of having to control his herd and bring them off the land during the off-season.

It was then that Bundy claimed that he supposedly “fired the BLM” and refused, from then until to the present, to pay any grazing fees or submit to permits.

It appears that Bundy made some attempt to fight the 1993 restrictions administratively but to no avail. But despite losing, he continued in his scofflaw ways, ignoring BLM regulations and restrictions pertaining to his use of the public lands, allowing his cattle to run wild and refusing to pay for the forage he leached off the taxpayers.

Ultimately, the BLM sued him in 1998 for trespass, the case being filed in the United States District Court for the District of Nevada before then-United States District Judge Johnny Rawlinson. Bundy lost the case and Judge Rawlinson issued an order requiring Bundy to remove his cattle permanently from the Bunkerville Allotment (hereinafter “the 1998 Order”). Making the same failed claims he continues to make to this day – the federal government cannot own the land – Bundy appealed the 1998 Order to the Ninth Circuit but lost there also.

Undeterred, Bundy simply ignored the 1998 Order, running his cattle as he always had, violating the 1998 Order just as he had all the other rules and regulations governing public lands. In 1999, Judge Rawlinson issued another order, re-affirming the 1998 Order and fining Bundy for each day he refused to remove his cattle. He ignored that Order just as he had the previous one.

Thereafter, other attempts were made to remove or have Bundy remove his cattle, all to no avail. The BLM went back to Court in 2012, filing a new lawsuit against Bundy

to remove his cattle from the LMNRA and also filing a motion to renew the 1998 Order pertaining to the Bunkerville Allotment.

United States District Judge Lloyd George presided over the 2012 action. As he had before, Bundy claimed that the federal government could not own the land. However, in keeping with well-established legal precedent, Judge George – like every other previous court – rejected Bundy’s claims in a July 2013 Order and required Bundy to permanently remove his cattle from the LMNRA within 45 days.

The motion in the 1998 action went before United States District Judge Larry Hicks. Like Judge George, Judge Hicks rejected Bundy’s claims in an October 2013 Order, re-affirming the 1998 Order and requiring Bundy to remove his cattle from the Bunkerville Allotment within 45 days. The Orders from Judge George and Judge Hicks each authorized the BLM to remove and impound the cattle if Bundy refused to do so, Judge Hicks expressly ordering Bundy not to physically interfere with any seizure or impoundment operation conducted by the BLM.

As before, Bundy refused to remove his cattle. Thus, the 2013 Orders in hand, the BLM planned for and commenced impoundment operations beginning around April 5, 2014. From the outset, Bundy interfered. The Superseding Indictment details Bundy’s numerous threats to “do whatever it takes” to prevent the BLM from impounding his cattle and the escalating violence and threats of violence he used to impede and disrupt the impoundment, including blocking convoys, assaulting law enforcement officers and terrorizing civilian employees.

Most nefariously – and perhaps most relevant to the detention decision here – Bundy and his sons, including D. Bundy, recruited gunmen to come to Nevada to confront the federal officers, issuing calls-to-arms over the internet to anyone who would listen to come to Bundy Ranch to confront the officers who were executing the federal court orders to impound the cattle.

Having recruited armed gunmen to threaten and assault federal officers because the federal laws they were enforcing interfered with his family's illegal cattle grazing activities in the past, there is no reason D. Bundy will not do so again.

B. The April 12, 2014, Armed Assault

By April 12 hundreds of people, including gunmen, had answered Bundy's calls-to-arms against the BLM. As the gunmen arrived, Bundy and his co-conspirators organized them into so-called "militia camps," deploying them from there into armed security checkpoints and patrols.

On April 12, Bundy rallied his gunmen and other Followers and commanded them to take his cattle back, unleashing over 400 Followers, including at least 60 of them armed, to converge on and assault the BLM's impoundment site, demanding the release of the impounded cattle corralled there. The Superseding Indictment sets out the nature of the assault that day. While the government does not intend to repeat those allegations here, it incorporates them by reference and further proffers as follows.

1. The April 12 assault was an extremely violent act.

On April 12, Bundy had mustered more than 60 firearms to assault and intimidate federal law enforcement officers while they were performing their duties. The evidence

shows that officers confronted an angry array of more than 270 Followers directly in front of them, their formation being backed up by gunmen brandishing or carrying rifles and firearms in the wash, or perched on high ground in over-watch positions, or in concealed sniper positions aiming their assault rifles from bridges. The officers guarding the gate that day, almost to a person, thought either they, or unarmed Followers in front of them, or both, were going to be killed or wounded. Many of these officers, some of them combat veterans, remain profoundly affected emotionally by this event to this day. Witnesses have described the level of violence as so intense that something as innocent as the backfire of vehicle, or someone lighting a firecracker, would have set off a firefight between the gunmen and the law enforcement officers.

The Superseding Indictment charges, and the investigation shows, that Bundy was responsible for recruiting gunmen to come to Bundy Ranch to confront law enforcement officers. Bundy and his co-conspirators did so by issuing numerous calls to arms, inciting and soliciting others to bring weapons to Bundy Ranch, to show force, to make the BLM back down, to surrender, and other similar exhortations. The justification, according to Bundy and his followers: BLM was acting unconstitutionally in impounding his cattle. In other words, BLM was enforcing the law and Bundy didn't like it – so he organized an armed assault.

2. Bundy, his co-conspirators and Followers have pledged to do it again.

The evidence shows that this was an unprecedented act. The gunmen traveled great distances in a short period of time, answering the call to arms, coming from more

than ten states to get to Bundy Ranch to confront the BLM, flooding into the Ranch between April 10 and the morning of April 12. The evidence shows that when the gunmen arrived, the conspirators organized them into camps, armed patrols, and security check points.

The evidence shows that Bundy rallied and directed his gunmen and other Followers to get his cattle out of the impoundment site on the morning of April 12. Bundy's son, Ammon, led the assault on one of the entrances to the site. Indicative of his intent that day was his statement to another person as he drove his truck to the impoundment site: "These federal agencies have a lot of power and they are not just going to give that power up. The people just have to take it, I guess."

D. Bundy also represented the family at the Impoundment Site, first making clear to local authorities present that the family's purpose in being there was to take back the cattle and anything less than that was unacceptable. D. Bundy also directed gunmen to take positions on the high ground. He then joined Ammon in the wash and helped lead the Followers there. D. Bundy agreed to go into the Impoundment Site with the SAC to finalize the terms of the BLM's departure. Ammon encouraged D. Bundy to "do a good job" and to "represent the family well."

In the immediate aftermath of the assault and extortion, after having delivered the extortionate demands to the SAC and forcing the officers into leaving by threatening violence, Ammon Bundy was asked whether BLM was gone for good. Ammon responded: "They better be or the people will do it again."

In an interview later in the evening on April 12, Ammon Bundy stated:

We the people expressed our power and as a result the Sheriff took control of his county. The Sheriff must protect the agency of man. The people have the power -- it's designed that way -- you have the people and then you have the Sheriff. Sovereign citizens on our own land.

Many of these same gunmen who conspired with Bundy and his son to assault the impoundment remain at large and, through Facebook posting and other social media outlets, have pledged to support Bundy again if BLM takes any action against him. There is no evidence to suggest that Bundy or any of his co-defendants could not quickly muster his gunmen again if any law enforcement action is taken against him.

C. Post-Assault: April 13 and thereafter.

Immediately after the assault, Bundy, D. Bundy and the rest of the family openly celebrated his role in driving the BLM out of the area. In an interview posted to the Pete Santilli Show's YouTube channel on or about April 16, 2014, Cliven Bundy was interviewed by an individual named Peter Rense. When asked whether the BLM still had officers in the area, Bundy stated, "We the people and the militia definitely rid this place of any of that kind of influence." See <https://www.youtube.com/watch?v=dI-3qYTMGgU> (last visited February 11, 2016). In the same interview, Bundy expressed dismay that the BLM was allowed to leave with their weapons on April 12: "we haven't won the war, we've just won one chapter of it." *Id.* Bundy's characterization of the assault as part of a larger "war" would be reiterated by D. Bundy and his other sons in various ways, reflecting the collective commitment to their ongoing criminal conspiracy.

The Bundy family relied on gunmen who continued to travel to Bundy Ranch in the months after the assault to protect Bundy Ranch and the Bundys' use of the public

lands. These individuals, camping in and around what the Bundys designated as “militia camps,” engaged in reconnaissance missions, manned check points on public roads, and conducted armed patrols of the area around Bundy Ranch to ensure BLM officers were not present and would not return. Bundy and his conspirators established a firing range on public land which his lead bodyguard used to train other gunmen to protect Bundy and his ill-gotten gains.

Bundy’s gunmen also took up over-watch positions along State Route 170, the main artery into the town of Bunkerville, and attempted to threaten their way into public facilities in the neighboring town of Mesquite, creating an environment of fear for these communities.

Organized patrols of the public lands continued all through the summer into the fall of 2014. Additionally, evidence shows that telephone lines with roster information were set up, donation pages on the internet continued to be utilized to solicit funds, and gunmen traveled back and forth from other states to do duty at the Ranch. The purpose of these missions was to ensure Cliven Bundy was not arrested and that BLM did not return to the public lands either to impound the cattle or for any other purpose.

On March 6, 2015, at a public meeting in Mesquite regarding pending BLM initiatives in the region, Bundy’s sons, D. Bundy and R. Bundy both spoke publicly, stating the BLM should stay gone from the region and had no title to the land at issue. Bundy’s bodyguard, Brian Cavalier stated, “If the BLM wants to go to the field to play ball, then me and my crew will come play ball too.”

On September 12, 2015, the Bundy Ranch Facebook page which the Bundy family has repeatedly expressed is the family's official page, posted a YouTube video featuring Ammon Bundy denouncing federal agencies with the following status update, "The Federal Government Does NOT have authority to be acting the way they are. PLEASE WATCH AND SHARE - Federal agencies are the greatest DANGER the American people have ever faced."

In the fall of 2015, the Bundy Family, both on Bundy's blog, bundyranch.blogspot.com, and on the Bundy Ranch Facebook page, began efforts to amass a movement to prevent two men, Dwight and Steven Hammond, convicted of federal arson-related charges in Oregon from self-surrendering in January for their federal prison sentence. On December 11, 2015, the following message was posted on the Bundy Ranch Facebook page:

. . . To all People, Patriot groups, Militias, Coalitions, Churches, Families and other Supporting entities . . . If we felt we could wait until after Christmas to give you this information we would. The Adversary never sleeps. We must stay aware, and act in these matters of defense. It is our duty to do so. . . . It is certain that what has happened to the people of Harney County and the Hammond family is a type and a shadow of what will happen to all people across these United States if we do not put an end to it. . . . Please understand that we must exhaust all prudent measures before taking a physical stand against the horrific actions that the People of Harney County are enduring (including the Hammond's). If this Notice is ignored, then one more Notice of Demand will be sent, it will list the many petitions that have been ignored and demand that the Hammond's rights be restored. If that final Notice is rejected then People across the Union will have justification to assemble and once again restore individual rights. . . .
Thank you,
The Bundy Family

The Hammonds were scheduled to report to federal prison on January 2, 2016.

That same day, the following message was posted to the Bundy Ranch Facebook page:

FOR IMMEDIATE PRESS RELEASE:

CLIVEN D. BUNDY

PO Box 7175

Bunkerville, NV 89007

702-346-5564

January 1, 2016

With great concern and love and much consideration from prayer, I come to you Harney County Sheriff of Oregon David M. Ward, rancher Steven Dwight Hammond, and rancher Dwight Lincoln Hammond, Jr.,

I, Cliven D. Bundy, have been involved for several weeks in the background striving to understand and comprehend your dilemmas in Harney County, Oregon. . . .

The United States Justice Department has NO jurisdiction or authority within the State of Oregon, County of Harney over this type of ranch management. These lands are not under U.S. treaties or commerce, they are not article 4 territories, and Congress does not have unlimited power. These lands have been admitted into statehood and are part of the great State of Oregon and the citizens of Harney County enjoy the fullness of the protections of the U.S. Constitution. The U.S. Constitution limits United States government.

It is my suggestion, Steven Hammond, that you go and check yourself into Harney County jail asking for protective custody. It is my suggestion, Dwight Hammond, that you go and check yourself into Harney County jail asking for protective custody. It is my suggestion, Harney County Sheriff David Ward, accept these two ranchers into your jail, notify the United States Solicitor in Washington DC that you have these two ranchers in Harney County jail, that they will remain there indefinitely under your protective custody and the protection of We the People of Harney County and We the People of the United States of America.

I suggest an Evidentiary Hearing or a Grand Jury be formed by We the People.

I feel that this action is immediately important, that it should be taken place before 10:00 am Saturday, January 2, 2016. I will hold these suggestions

private until that time then I will release this letter to those having state and county jurisdiction and to the media.

Cliven D. Bundy

Despite the Bundy family's efforts otherwise, the Hammonds reported for their federal sentence as directed to do so on January 2, 2016. However, that same day, Ammon Bundy, R. Bundy, Ryan Payne and others took over the MNWR, occupying it with guns and openly stating their intention to prevent federal officers from returning to do their work on the refuge.

Bundy made statements in the media, linking the April 12, 2014, assault to the MNWR occupation. In a video and article from the Channel 8 Las Vegas Now website, titled "Rancher responds to calls for his arrest," posted on or about January 19, 2016, Bundy stated, "I'm not gonna ever let the federal government come here and abuse me, and my ranch, and my cattle and the public again. . . . We have really enjoyed our freedom and liberty out here and enjoyed the land, and that's what the Bundy standoff was all about. It was to give access to the people, and I would be able to continue ranching and tradition. . ." With respect to the MNWR takeover, Bundy stated, "Somebody has to stand up, and it happened to be my sons that stood, and they will stand. They're not going to give up." <http://www.lasvegasnow.com/news/rancher-responds-to-calls-for-his-arrest> (last visited February 13, 2016).

On January 22, 2016, weeks into the MNWR occupation, in a video and an article from the Fox 5 Las Vegas website, titled "Activists call on government to arrest Cliven Bundy, sons," Bundy stated about the MNWR occupation, "They did something they had

to do. It has been extreme but the world has been listening.” In the same interview, addressing the April 12 assault, Bundy stated, it was “very much a success. We are standing in the freest place on earth. . . Quit worrying about the Bundys, and if we’re terrorists, so what? We’re terrorists We the People are enjoying freedom here.”

<http://www.fox5vegas.com/story/31036532/activists-call-on-government-to-arrest-cliven-bundy-sons> (last visited February 13, 2016).

D. D. BUNDY’S Role In the Conspiracy.

D. Bundy shares his family’s rejection of federal laws and of federal courts. As a young adult, D. Bundy refused to stop for BLM law enforcement officers patrolling the Gold Butte public land area. Prior to the impoundment, D. Bundy traveled with his father and brother to present on “How to Stand Up to the BLM and Win!” When advised of the 2014 BLM impoundment, D. Bundy demanded that Sheriff Gillespie protect Cliven Bundy and his property from the federal government and stood with his brother and co-defendant Ryan Bundy as he told the Sheriff they would do whatever was necessary to protect their property. On April 1, 2014, D. Bundy quit his job as a fixed-wing helicopter pilot with Grand Canyon Tours so that he could assist Bundy against the BLM.

1. D. Bundy obstructed impoundment operations and recruited gunmen.

On April 6, 2014, D. Bundy obstructed the BLM’s effort to enforce the court orders when he, his co-defendant brother Ryan Bundy (“R. Bundy”) and others took up positions near the egress point of a BLM cattle convoy off of the two-lane State Route

170 (SR 170). A federal law enforcement officer observed D. Bundy sitting in his car on SR 170 near this point for approximately two hours. D. Bundy's vehicle was parked in such a way that it blocked traffic on SR 170 as cars were forced to drive around the vehicle. As the BLM cattle convoy was ready leave the range and return via the dirt road to SR 170, D. Bundy and the other vehicles remained in the area.

The officers performing perimeter security recognized that the six to seven vehicles including D. Bundy and R. Bundy were positioning themselves around the egress point. Bearing in mind the Bundy family's repeated statements that they would "do whatever it takes" to prevent the BLM from impounding the cattle, the officers believed the vehicles were positioned to block or otherwise impede the convoy.

Toll records show that while D. Bundy was in this spot, he called Bundy, R. Bundy called D. Bundy, and D. Bundy called Bundy again. During this time, a BLM officer announced over a loudspeaker that they were interfering with a court order and that they should disperse. D. Bundy, however, stood outside his vehicle on the shoulder of SR 170 holding up an iPad.

R. Bundy slowly drove his van, with his wife and children inside, parallel to D. Bundy vehicle facing opposite directions. R. Bundy stopped in the middle of the roadway effectively blocking travel in that direction. The two appeared to be speaking to each other.

BLM officers announced that the area was closed to the public and to leave. D. Bundy refused. After repeated efforts to clear the area without contact proved unsuccessful, BLM officers approached D. Bundy and directed him to leave, advising

that if he did not, then he would be arrested. D. Bundy responded by telling the officers, "you have no authority." A ranger told D. Bundy that he was under arrest and began to physically restrain him. D. Bundy made up his mind that he was not going to follow their commands.

As a law enforcement ranger took hold of D. Bundy's right hand, D. Bundy immediately clenched his fist, pulled his right arm toward his side and locked it at a 90 degree angle. D. Bundy began turning and twisting his body in an attempt to free his hand. Because D. Bundy continued to resist, the rangers took him to the ground. He refused to comply as the officers attempted to pull his arms out from under him. Ultimately four officers acting together were able to get both hands out from under D. Bundy and place him in handcuffs. D. Bundy was taken into custody and transferred to the Henderson Detention Center.

The following day, D. Bundy was released from custody with citations including one for resisting arrest. He was interviewed about his arrest in a video which was posted to YouTube shortly thereafter where it was widely viewed and shared, stating:

. . . I looked at that [] officer and I told him, I said "I don't let anybody tromp my face in the ground." I says "I would like to meet you in an alley," is what I told him, and I hope the media covers that and he gets that message, cause I'm still looking for him....

There was a woman that kinda seemed to be in charge, at least of what they were doing with me, and her name was . . . and she came into the passenger seat and was asking me questions, and I said "Mrs. . . . , I don't have to answer anything to you," and she goes to me "I am Officer . . . , " and I says, "to me you're nothing . . . "

When I got to the detention center and they were unloading me, . . . [the officer] pulled out the Miranda rights and read them to me, and I told him “you don’t need to do that because you don’t have the authority to do that anyway.”

D. Bundy identified the officer who arrested him and stated his name in the interview above. Thereafter, Bundy family and Followers accosted BLM officers as they provided security for the impoundment yelling and demanding that they produce the officer Bundy Followers further published the name of the officer over the internet.

The Bundys began capitalizing upon D. Bundy’s arrest almost immediately, with Bundy stating publicly on April 6, “they have my cattle and now they have one of my boys...Range war begins tomorrow at Bundy ranch . . .”

On April 11, 2014, D. Bundy and his family members organized a rally at their staging site on S.R. 170. D. Bundy met attendants at the rally and discussed the BLM impoundment of his family’s cattle with them, ultimately recruiting gunmen for the April 12 assault.

Also on April 11, 2014, the Bundys used a red helicopter bearing the logo “Grand Canyon Tours” (D. Bundy’s former employer) on its side to fly over the Impoundment Site. Later that day, aerial photographs showing the layout of the Impoundment site were posted to the Bundy Ranch Facebook page.

2. D. Bundy leads the assault and extortion on April 12.

D. Bundy played a significant role in the events of April 12. Toll records indicate that as early as 5 am D. Bundy was in communication with his co-conspirators. D. Bundy met with Bundy on stage after he made his demands to the Sheriff.



After Bundy directed the crowd at the staging area to go get the cattle, D. Bundy traveled to the Impoundment site. He met gunmen there who he had previously recruited and told them to stay on the high ground. These gunmen indicated after April 12 that they were “at the battle” and were “locked and cocked in a vehicle, over watching the standoff on the hill, as requested by Dave Bundy. . . .”

When LVPMD Assistant Sheriffs attempted to talk to D. Bundy at the Impoundment Site to diffuse the situation, D. Bundy made it clear that his family and the Followers were there to “take the cattle.” When these officers explained they may need to negotiate on the issue of the cattle, D. Bundy stated, “Unacceptable!”

D. Bundy moved into the wash with Ammon Bundy and other Followers. When the SAC approached the cattle guard, D. Bundy met him and agreed to go with him to reach a final resolution of the situation. The SAC repeatedly asked that the crowd pushing at the cattle guard move back. D. Bundy directed them to move back and stated

they would give the BLM thirty minutes. Following his command they began to pull back.



[D. Bundy Advising Followers They Would Give BLM 30 Minutes]

D. Bundy and R. Bundy met with the SAC where they finalized that the BLM would immediately prepare to leave the area as quickly as possible. The SAC advised he could not authorize them to take the cattle and to do so would violate federal law. They acknowledged his statement and moved back.

3. D. Bundy's Post April 12 Assault Activities.

Following the April 12 assault, D. Bundy continued to give interviews and statements with his family. He regularly traveled back and forth to Bundy Ranch. On April 13, D. Bundy gave an interview where he stated the name of the SAC and stated that the SAC was responsible for all the "dirty work" being done by the BLM.

D. Bundy stated that what was really at issue in the Impoundment events was control. "If they have control of the land, they have control over the people." He also stated that he was "currently a professional pilot but still very involved in the ranch and the farm." D. Bundy also claimed that his family had preemptive rights over the use of

the land and had never been given rights from the federal government. He encouraged people to come out to Bundy Ranch, stating “come and fight for your rights, for your sovereignty,” and called it a “freedom fight.” See “Dave Bundy, Son of Cliven Bundy, Explains the BLM Problems W/ Brian Engelman & Blake Walley”

<https://www.youtube.com/watch?v=Yka3k2nLXJM> (last visited February 28, 2016).

D. Bundy also supported his brothers’ armed takeover of the MNWR in Oregon. On December 29, 2015, he posted the following article titled, “BIGGER THAN BUNDY STAND-OFF: Armed Militia on High Alert as Feds Label Oregon Ranchers . . .” to his Facebook page, which links the April 12 assault to the MNWR takeover: The picture depicts a gunman around the time of the assault standing in front of Bundy Ranch.



Dave H. Bundy shared a link.

December 29, 2015 · 🌐



BIGGER THAN BUNDY STANDOFF: Armed Militia on High Alert as Feds Label Oregon Ranchers...

The family of Dwight Hammond have come under the tyrannical eye of...

WOUNDEDAMERICANWARRIOR.COM | BY FREEDOM DAILY

On January 2, 2016, D. Bundy shared Cliven Bundy's January 1, 2016, letter, advising that Dwight and Steven Hammond turn themselves in to their county sheriff and that the sheriff protect them from the federal government.

On January 4, 2016, D. Bundy posted a lengthy message on his Facebook page, stating:

It is real easy to idly stand by, say all is well ye zion prosper standing idle in carnal security looking tuff speaking bold, but when there is an opportunity to stand up against the evils and tyranny that is encircling around all of us, your types are nowhere to be found but behind the scenes scrutinizing those who have the patriotism, zeal for country, commitment to the constitution and understand the devine responsibility that is ours to defend what we fought for so valiantly in the pre mortal, AGENCY. I fully believe in Edler Oaks's talk, we must be cautious not to fall into extremism, we must seek the spirits guidance in all we do. However I also believe in obeying the thousands of other Prophets and Apostles warnings and pleadings to stand for agency, freedom and with the divine U.S. Constitution. I believe that we should be law abiding citizens, so far as it is Constitutional as we are directed so in the 98th section of the Doctrine and Covenants. **I have personally questioned the recent strategies taken by my brothers. However let me make it very clear that I 100% agree and will defend the principles that drive their commitment.** There have been aggressious act of blatant tyranny upon many multiple land users in Carney Co. OR. Including the Hammond family. Tyranny that has violated there God given unalienable rights as human beings, many of there state/civil rights, including their pre-emptive rights. **All by a bureaucracy that Constitutionally has absolutely no Authority and Jurisdiction over them or their ranch,** all in an effort to take their ranch, rights to the land and livelihood away. (I also must mention the treason committed by their County Sheriff, the coward made an oath to protect the life, liberty and property of those within his county, his oath is not made to the BLM.) Old man Hammond will most likely die in prison before his release in four years. Over the past few years he and his son have been persecuted and Imprisoned for a common practice of burning for weed control and fire protection that has been a practice used by Ranchers for centuries. Remember, the Hammonds are a God fearing, Christian family with grandchildren and a way of life they love and cherish and have been good stewards over the things God has given to them. It would truly be a tragedy if we the people failed to do something in there behalf. Don't get hung up

on the media spin that they took over a federal building and have guns. First of all who's building really is it, second don't we have the right bear and keep arms? I think our heavenly father is pleased with those who put forth effort to preserve the most divine principle of Agency. It is evident now what president Benson said in a talk titled "not commanded in all things" he said many and I emphasize many priesthood holders will be led a stray like a bull with a nose ring regarding defending the constitution in the last days. I'm paraphrasing so go look it up and read it for yourselves. This is not the time to climb upon your high horse and cast criticism upon your family, rather it is the time to support and pray for their protection and for the Hammond family and the people of Harney County. Go captain Moroni.

(emphasis added).

On January 4, he also shared the Facebook page, "I Stand with the Oregon Militia:"



On January 5, 2016, D. Bundy shared another Facebook user's status update providing the names, addresses, and phone numbers of two federal employees, encouraging people to call them and find out what they would be doing in the future.

On January 6, Dave Bundy shared a lengthy letter addressed to Harney County Sheriff War. The post, signed by Dave Bundy was originally posted on the Bundy Ranch Facebook page and states:

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January 5, 2016

Dear Sheriff David Ward
Harney County, Oregon

In light of the ongoing protest as a result of the oppression of many in your county, I would like to share my thoughts and offer my assistance regarding your involvement in this matter.

You put yourself up and presented yourself to run for the elected office of Sheriff, You have been elected by the good citizens of Harney County and made an oath to them to protect their Lives, Liberties and Property. As a sworn protector, You promised them that you would protect them from enemies both foreign and domestic. You promised and assured them that you would support and defend the U.S. Constitution. You solemnly swore and entered into an oath before God and the people that you would uphold these promises.

Sheriff, your oath was not made to the federal government nor any of their corporate entities such as the BLM or Forest Service etc. This oath was quite the contrary that created a Sacred duty, to serve, protect and defend every single one of your citizens like a hen protects her chicks against all threats. Don't forget who your boss is, we the people of Harney County. For the sheriff to allow anyone or anything to violate the rights of his people, We The People, is a dereliction of duty of the highest order.

I must ask, **what happened to the protection the Hammond family did not receive? Where were you when a foreign entity not having any constitutional power, authority and jurisdiction within your county abused your citizens?** Imprisoned them, restricted them from using there resources to make a living, ruining their way of life and violating their customs and culture and charging them with heavy fines. These were the people you swore before God and the people to protect. Why did you forsake them?

Have you taken sides with the Feds? Are you scared to do your duty? Are you ignorant to what your duties are? Are you scared of how the Feds may react if you actually perform your sworn duties? I would really like to know what your excuse is for not honoring your oath of office as Sheriff of Harney County.

In the wake of your abstanance you now have some very important decisions that need to be made very soon. It should not be a hard decision understanding your purpose of existence as stated in the oath you have taken. The choice is simple, A. to turn a blind eye against your people and continue to collaborate with the Feds, pushing their agenda to remain in power and control over the people and their resources and to continue participating with fear mongering tactics such as shutting down schools etc.

and now participating in the new growing threat of violence by the Feds toward peaceful protesters. or B. Re-commit yourself to uphold and perform your duties to We The People of Harney County and utilize the protesters that have come to your peoples assistance and say simply, no to the Feds and rid your county of their presence and tyranny that they have spread across your County.

Understand that the protesters have peacefully assembled only to support you and your people who are and have been oppressed by Federal over reach. Understand that their assembly is a constitutional right and act. Understand that they do not intend any harm to anyone, they sincerely want to restore the rights, land and resources that belong to the people of Harney County who have pre-emptive rights to them and non other, especially any federal Corporation. Understand that Constitutionally it is impossible for the federal government to own or manage land outside the bounds and terms stated in art. 1 sec. 8 par.17 of the U.S. Constitution. Remember that governments were instituted among men & women for the security of the rights of the people and that when governments begin to abuse those rights and fail to secure them, it is up to none other than the people themselves to uphold those rights, it is their right, it is their duty to dispose of the tyrannical government infringing upon those rights. (see the Declaration of Independence.)

This sheriff is why citizens all across this nation assemble at times for redress of grievance for the respective oppression to cease. For this reason the protesters have come to your county. They have come hoping for your blessing and support and to support you in the changes you will need to make. Remember that you have the authority to promote a positive and forthright outcome working with the people to create liberty and prosperity in your county. However you also have the ability to exercise your individual agency and abuse your office and power given you to continue your lawlessness. If you continue in this direction, I'm afraid you may have blood on your hands.

Sheriff, I respect the office that you hold and the awesome responsibilities that are your's and pray that you may be given the strength to say simply no to the feds, rid them of your county, give back the lands and resources to the people whom they were taken from and ultimately restore prosperity and liberty in your county. I know that would be the right thing to do, I believe as a steward with the accountability to the people, God will be pleased with and uphold you.

I do not reside in Oregon but can be available at your request to help you in any way I can to restore the rights of the people of Harney County.

Sincerely, your supporter.

Dave Bundy
Concerned American

(emphasis added)

On January 27, 2016, the day after Lavoy Finicum was shot and killed during the arrests for the MNWR takeover, D. Bundy posted the following status update:



On January 28, 2016, after the arrest of his brothers Ammon and Ryan Bundy, D. Bundy posted this status update on Facebook stating, "AMERICANS ARE COWARDS:"



D. Bundy also posted numerous status updates regarding the MNWR takeover, including posts proclaiming the convening of the first Constitutional county and people's grand jury, as well as information about Ammon Bundy's legal defense fundraising, phone calls and other messages from Ammon Bundy and other support for the MNWR arrestees.

On February 26, 2016, D. Bundy shared Bundy Ranch's Facebook post on his own page, depicting two pictures of a t-shirt that states, "Freedom Isn't Free" and "WHATEVER IT TAKES," and attributing the latter statement to Cliven Bundy:



ARGUMENT

The Bail Reform Act provides that a judicial officer shall detain a defendant pending trial where “no conditions or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Detention is appropriate where a defendant poses either a danger to the community or a risk of non-appearance and it is not necessary to prove both. *See United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). The Government must establish by clear and convincing evidence that the defendant presents a danger to the community and by a preponderance of the evidence that the defendant is a risk of non-appearance. *Id.*

In determining whether pretrial detention is appropriate, Section 3142 provides four factors for the Court to consider: (1) the nature and circumstances of the offense charged, including whether the offense charged is a crime of violence; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger posed by the defendant’s release. *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990); 18 U.S.C. § 3142(g).

Where, as here, there is probable cause to believe that the defendant has committed an offense under Title 18, United States Code, Section 924(c), the court shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community. 18 U.S.C. § 3142(e)(3)(B).

At the detention hearing, the Court may properly rely upon a proffer by counsel in determining a defendant's danger to the community or risk of flight. *See United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986) (“[T]he government may proceed in a detention hearing by proffer or hearsay.”)

A. The Offenses Charged Are Based on D. Bundy's Violent Crimes and His Disregard for Federal Law and Federal Court Orders.

Crimes of violence for purposes of the Bail Reform Act include any offense that has as “an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another,” and is a felony that “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” See 18 U.S.C. § 3156(a)(4)(A). Here, the Indictment includes crimes of violence: assault on a federal officer with a firearm and deadly weapon; extortion by force and violence; Section 924(c) counts as to each; and conspiracy to commit same.

D. Bundy recruited and led hundreds of Followers, including dozens of gunmen armed with assault rifles, in an assault on federal law enforcement officers. But for the courageous restraint of the victim law enforcement officers that day, both in leaving the impoundment site and avoiding the area afterward, this violent assault could have resulted in the catastrophic loss of life. D. Bundy himself recognized, without remorse, that it would have been a “bloodbath” if shots had been fired that day. The level of violence displayed on April 12 by the Bundys and their Followers against law

enforcement officers is simply unprecedented and betrays D. Bundy's willingness to go to any lengths, even kill law enforcement officers, to achieve his family's goals.

The inescapable corollary is that D. Bundy will do it again if the opportunity presents itself. D. Bundy has not changed his mind about anything that happened at Bundy Ranch and his participation in it. To the contrary, he has embraced it and used it to encourage further lawless activity such as the occupation of the MNWR. D. Bundy believes he and ranchers around the country are engaged in a war with a tyrannical federal government. He used force to achieve his objectives and will likely use force again. Prior to the assault, Cliven Bundy threatened continuously that he would do "whatever it takes" to get his cattle back. The events of Bundy Ranch have demonstrated that "whatever it takes" means using guns against law enforcement officers. D. Bundy is proud of that and peddles t-shirts with that logo, showing that he has not changed his mind at all about law enforcement and using force and violence against them.

Additionally, D. Bundy maintained an active presence at Bundy Ranch. The Bundy family used gunmen to man checkpoints and conduct security patrols following the April 12 assault. His family's threats of force and past use of force have, to date, prevented law enforcement officers from carrying out the court orders to remove Bundy's cattle from the public lands and kept them from patrolling and enforcing the laws and regulations pertaining to the large swath of public lands known as the Bunkerville Allotment.

If D. Bundy were released little could be done to prevent his return to Bundy Ranch. The continued absence of a law enforcement presence on the Bunkerville Allotment directly threatens the safety of others who wish to enjoy or use the same land that the Bundy family now has free reign over. Thus, Bundy would pose a significant risk of non-appearance, allowing him to bunker down at the Bundy Ranch, fortify it with armed guards and thereby require federal officers to face the dangerous task of apprehending him. This is especially the case given the charges and the potential sentence D. Bundy faces if convicted of them. D. Bundy has a strong incentive to flee because of the likelihood of a significant prison sentence if he is convicted. *See Townsend*, 897 F.2d at 995 (“[F]acing the much graver penalties possible under the present indictment, the defendants have an even greater incentive to consider flight.”).

Given the magnitude of the violence of D. Bundy’s crimes coupled with his knowing and willful violation of federal laws and disregard for the authority of federal law enforcement officers, D. Bundy cannot overcome the presumption that he is both a danger to others and to the community and presents a risk of non-appearance.

B. Substantial Evidence Exists Establishing D. Bundy’s Guilt

In the immediate aftermath of the April 12 assault, federal law enforcement officers were forced to abandon the impoundment site, precluding them from conducting an immediate investigation. Out of safety concerns and the need to deescalate the violence and restore order, the remaining local law enforcement officers – who themselves were outnumbered by Bundy’s Followers – allowed the gunmen and the conspirators simply to leave the site without making any arrests, conducting any

interviews, taking any statements, or obtaining any identification of the gunmen and other assailants.

Absent contemporaneous arrests and identifications, the investigation became purely historical in nature. The presence of many gunmen in and near the area of Bundy Ranch, the armed checkpoints and patrols, the presence of assault weapons in the militia camps, including (by some accounts) a .50 caliber machinegun, further increased the difficulty of conducting a physical investigation of Bundy Ranch or the impoundment site.

All of that said and despite those obstacles, the investigation began the day after the assault and continues to this day, identifying the assailants, where they came from, how they got to Nevada, their connections to D. Bundy and others and their role in the assault and the aftermath.

To date, the government has conducted hundreds of witness interviews; executed dozens of search warrants; reviewed, organized and analyzed hundreds of thousands of pages of documents (mostly from social media); reviewed, organized and analyzed thousands of pages of telephone records; and organized, reviewed and analyzed hundreds of hours of audio and video recordings.

In addition to his numerous statements captured on social media, D. Bundy is captured on video attempting to obstruct the impoundment on April 6 and leading the assault and extortion at the Impoundment site on April 12. A number of witnesses describe his involvement in the conspiracy and the ongoing activities at Bundy Ranch both during and after the assault. The evidence overwhelmingly establishes that D.

Bundy was a leader, organizer and a beneficiary of the conspiracy to impede and assault the federal officers conducting impoundment operations on April 12.

C. D. Bundy's History and Characteristics Demonstrate the Danger and Risk of Non-Appearance He Poses

For two decades, Bundy has grazed his cattle on federal lands without complying with BLM regulations or paying any grazing fees or other penalties, despite four federal court orders directing him to cure these violations. For two decades, D. Bundy has assisted his father in doing so. When the Bundy family was presented with the impending court-authorized impoundment of Bundy's cattle, D. Bundy, a father of four at the time, quit his job in Utah, traveled to Bunkerville, Nevada, attempted to physically interfere with the impoundment, fomented against the BLM, recruited an army of Followers who expressed a willingness to raise weapons against federal law enforcement officers, and then led those Followers in the assault on April 12.

D. Bundy's rhetoric and his conduct relating to these charges makes clear that he has not changed his mind about the BLM or the federal government. As demonstrated above, D. Bundy has declared a personal war against the BLM and the federal government and there has been no evidence adduced during this massive investigation to suggest that he has changed his mind about any of that.

Further, there simply is no indication in any of the evidence that an Order for less restrictive conditions from this Court will get D. Bundy to now comply with Court Orders where, up to this point, he hasn't complied with a single one. As shown above, he views the federal government – which includes federal courts – as “evil,” “tyrannical”

and “foreign.” In his warped view of the world, federal law enforcement is the enemy and he is the avenging warrior, fighting for his divinely inspired view of the Constitution.

There is no assurance that D. Bundy will in the least adhere to pretrial restrictions contained in yet another court order, which restrictions will no doubt include that he comply with and follow all federal laws which would include federal court orders that require the removal of his father’s cattle from public lands. Every day that he is free, he enjoys benefits derived from Bundy Ranch. Those benefits flow from the criminal enterprise operated by him and his family for years, most recently culminating in retaining, and enjoying the benefits of, the proceeds of extortion. Every day D. Bundy is free, he is in violation of federal law and federal court orders.

D. D. Bundy Poses A Significant Danger to the Community

D. Bundy’s conduct in April, 2014, risked the lives of many people – he incited and led approximately four hundred people to travel to the BLM impoundment site to face off with federal law enforcement officers, dozens of gunmen in support. But for the courageous restraint of these officers, this violent assault would likely have met with violent and deadly ends.

D. Bundy continues to put federal law enforcement officers, civilian employees, and community members at risk with his conspiracy to impede BLM in performing their duties around the country. D. Bundy was willing to put these people at risk in April 2014 when faced with the impoundment of his father’s cattle. He supported and encouraged the armed takeover of MNWR ostensibly over lands rights issues. That D. Bundy now

faces a lengthy incarceration if convicted of the charges can only bode more dangerous conduct if he is released.

E. Only Pretrial Detention Will Reasonably Assure the Safety of Others and the Community and D. Bundy's Future Appearance

D. Bundy cannot overcome the presumption of detention in this case. The charges, the evidence, his history and characteristics, and the danger he poses to the community and others establish that there are no conditions or combination of conditions that can address these risks. As already discussed, any terms of release would have to include D. Bundy's adherence to all laws – not just those he thinks are Constitutional. He has demonstrated and stated that he will not follow federal laws. To the contrary, he believes, as shown above, that the federal courts are part of a foreign corporate entity that has unlawfully invaded his land.

Even the most stringent of conditions are insufficient to assure the safety of the community or the appearance of the Defendant given that ultimately, they must rely on the Defendant's good faith compliance. *See United States v. Hir*, 517 F.3d 1081, 1092 (9th Cir. 2008) (Noting that although the defendant and pretrial services proposed "strict" conditions, "they contain[ed] one critical flaw. In order to be effective, they depend on [the defendant's] good faith compliance."); *see also Tortora*, 922 F.2d 880, 886 (1st Cir. 1990) (concluding that an extensive set of release conditions contained "an Achilles' heel ... virtually all of them hinge[d] on the defendant's good faith compliance"). In *Tortora*, an alleged member of a prominent mafia family stood trial for crimes under the racketing and organized crime statute. The First Circuit considered the elaborate conditions

proposed that would restrict any communications with the defendant's cohorts.

Ultimately, the court rejected those conditions, recognizing that "the conditions as a whole are flawed in that their success depends largely on the defendant's good faith-or lack of it. They can be too easily circumvented or manipulated." *Tortora*, 922 F.2d at 886.

Such considerations are doubly present here, given that D. Bundy's crimes in this case are rooted in his family's defiance of federal court orders directed specifically to his father, and that his commitment to flouting federal authority has been maintained in word and deed through the present.

III. CONCLUSION

For the reasons stated herein, D. Bundy is a danger to the community and poses a risk of non-appearance. A presumption applies that he shall be detained and D. Bundy cannot overcome that presumption. The charges, the evidence, D. Bundy's history and characteristics all establish that no conditions or combination of conditions will reasonably assure the safety of others, the community, or D. Bundy's appearance at future proceedings. Accordingly, the Government respectfully requests that the Court order D. Bundy detained pending trial.

Dated this 8th day of March, 2016.

JOHN W. HUBER
United States Attorney

/s/ Alicia H. Cook
ALICIA H. COOK
Assistant United States Attorney